

Gary Wiegand and Diane Wiegand

v.

Town of Exeter

Docket No. 5296-88

DECISION

A hearing in this appeal was held, as scheduled, on June 14, 1990. The Taxpayers represented themselves. The Town was represented by John DeVittori, Assessor.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$279,200 (land, \$77,600; buildings, \$201,600) placed on their real estate, located at 38 Kingston Road for the 1988 tax year. The property consists of a dwelling with an attached garage on a .95 acre lot.

Neither party challenged the Department of Revenue Administration's equalization ratio of 100% for the 1988 tax year for the Town of Exeter.

The Taxpayers argued they were over assessed in comparison to their purchase price of \$248,000 in December of 1988. They also submitted three comparable properties in the area that all sold within six months of April 1, 1988, for less than their assessments.

The Town submitted a grid of three comparable properties in the area to show consistent assessing methods.

The Board rules as follows.

The Taxpayer's appeal is based on the Constitution of New Hampshire, Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time, . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same

and RSA 75:1 (supp.) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

While the Taxpayers submitted three sales that by themselves would indicate an assessment to sales ratio of over 100%, the Board finds the ratio of all property in Exeter for 1988 was 100% as determined by the Department of Revenue Administration.

The Board finds that the house had drainage and wet basement problems during the period of time it was being marketed and as of April 1, 1988, but that it was rectified by the time the Taxpayers purchased the property. Based on all the evidence before it, the Board rules that the building value should be reduced by an additional 5% functional depreciation for the drainage problems.

Thus the Board rules the correct 1988 assessment is \$268,650 (land, \$77,600; buildings, \$191,050).

If the taxes have been paid, the amount paid on the value in excess of \$268,650 is to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue, Member

Paul B. Franklin, Member

Date: August 24, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Gary & Diane Wiegand, taxpayers; and Chairman, Selectmen of Exeter.

Michele E. LeBrun, Clerk

Date: August 24, 1990

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